

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHEVRON U.S.A., INC.,

Plaintiff,

V.

IN N OUT MINIMART ON
BROADWAY, INC.,

Defendant

Case No. C09-0018RSL

ORDER GRANTING
AMENDED MOTION FOR
DEFAULT JUDGMENT

This matter comes before the Court on plaintiff's amended motion for entry of default judgment against defendant "In N Out Minimart." Default was entered against defendant on February 17, 2009. Plaintiff's first motion for entry of default judgment, like the instant motion, sought only an award of attorney's fees and costs. The Court denied that motion because it did not set forth the basis for an award of fees and costs or any supporting authority.

The amended motion clarifies that plaintiff seeks attorney's fees under the Lanham Act, 15 U.S.C. § 1117(a), which provides that the Court "in exceptional cases" may award reasonable attorney's fees to the prevailing party. "While the term 'exceptional' is not defined in the statute, attorneys' fees are available in infringement

1 cases where the acts of infringement can be characterized as malicious, fraudulent,
2 deliberate, or willful.” Derek Andrew, Inc. v. Poof Apparel Corp., 528 F.3d 696, 702
3 (9th Cir. 2008) (internal quotation and citation omitted). In this case, the complaint
4 explicitly alleged that defendant’s conduct was willful. As the *Derek Andrew, Inc.* court
5 explained, once default has been entered, the allegations in the complaint, except with
6 respect to the amount of damages, are taken as true. Id. Accordingly, the relevant
7 allegations in the complaint are taken as true, including the allegation that defendant
8 willfully infringed plaintiff’s trademark. That allegation and the entry of default
9 sufficiently establish plaintiff’s entitlement to attorney’s fees under the Lanham Act. Id.
10 The requested costs are taxed pursuant to Local Rule 54(d).

11 Accordingly, plaintiff’s amended motion for entry of default judgment (Dkt. #11)
12 is GRANTED.

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14 DATED this 5th day of June, 2009.

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17 Robert S. Lasnik
18 United States District Judge
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